

TERMS AND CONDITIONS

Article 1. ITEMS TO BE SUPPLIED BY OWNER: Owner agrees to supply, without charge to Contractor, at the site of work for use by Contractor in connection with the performance of the work under this Contract, the items specified on "Exhibit "B" attached hereto.

Article 2. ITEMS TO BE SUPPLIED BY CONTRACTOR: Contractor agrees to supply at the location where the work is to be performed at no charge other than the compensation provided on the face of this Contract, everything necessary for the complete performance of this Contract, including all labor, tools, implements, equipment, machinery and materials, except such as is to be supplied by Owner.

Should the Contractor at any time during the performance of this Contract be delayed in the performance of the work hereunder by reason of lack of materials or equipment to be furnished by Contractor the Owner reserves the right to supply such materials or equipment to the Contractor, at Owner's cost, and the cost of such materials or equipment shall be deducted from the amount becoming due to Contractor hereunder.

Article 3. NO REPRESENTATIONS TO CONTRACTOR: It is distinctly understood and declared by the Contractor that this Contract is made for the consideration set forth on the face of this Contract and that the Contractor has by careful examination satisfied himself as to the nature and location of the work to be performed, the conformation of the ground, the character, the quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and as to any and all other matters and conditions which can in any way affect the work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

Article 4. MUNICIPAL FEES AND DEPOSITS: Contractor agrees to secure all necessary permits in connection with the performance of the work under this Contract and to pay all municipal and other fees in connection therewith, and agrees to furnish at its expense any and all bonds and cash or other deposits required by law or required by any lawful body having the right to make demand therefor.

Article 5. COMPLIANCE WITH APPLICABLE GOVERNMENTAL STATUTES AND REGULATIONS: Contractor, its employees and all others acting under its direction or control, shall at all times observe and comply with, insofar as they may be applicable, and all laws, ordinances, statutes, rules and regulations of the United States and of the State of Washington and of their executive and administrative agencies and of any and all other governmental agencies having any jurisdiction over the work to be done hereunder, and shall also observe and comply with any and all rules and regulations of the Owner.

Article 6. PLANS, DRAWINGS AND/OR SPECIFICATIONS: Contractor agrees fully to perform this Contract to the entire satisfaction of Owner and in strict conformance with any plans, drawings and/or specifications referred to or incorporated in this Contract, or in any amendments or additions made to this Contract, and also in conformance with any plans, drawings, and/or specifications in effect at the date of this Contract, required by any lawful body having the right to demand that said work should be performed in the manner specified by such body.

Article 7. ADDITIONAL DRAWINGS: Owner, in its discretion, may supply Contractor with such additional plans, drawings, specifications and/or explanations as may be necessary to further detail and illustrate the work to be done, and Contractor agrees to conform thereto. Contractor, where Owner deems necessary, will furnish Owner with shop and/or work drawings showing details of work to be performed.

Article 8. DEVIATION FROM PLANS, DRAWINGS, AND/OR SPECIFICATIONS: Owner reserves the right to correct any errors or omissions in, and to make any change in, deductions from, or additions to the plans, specifications and/or work to be performed, Contractor shall not depart from the requirements of the plans and specifications or work to be performed until first directed in writing by Owner; and thereafter Contractor agrees to immediately comply with such directions and proceed with the work. Within five (5) days after receipt of such directions, Contractor will furnish to Owner a statement of its estimate of the net increase or decrease in the cost resulting from its compliance with such directions. Owner shall consider the statement so submitted and upon the basis thereof and of such other matters as they may deem relevant shall determine the amount of any increase or decrease in the Contract price and shall issue a change order hereto providing for any such increase or decrease in the Contract price.

Article 9. RECORDS, ACCOUNTS AND AUDITS. Contractor agrees to keep one complete set of records and books of account on a recognized cost accounting basis satisfactory to the Owner, showing all expenditures of whatever nature, made pursuant to the provisions of this Contract.

Contractor shall furnish Owner with such records, information and data as may be reasonably required and Owner shall at all reasonable times be afforded the opportunity to inspect and/or audit the above-specified books and records of said Contractor:

- (1) If the compensation payable hereunder is based on the costs of the work,
- (2) If this Contract provides for escalation of the compensation, or
- (3) If this Contract is terminated by Owner.

Article 10. CONTRACTOR NOT AGENT OF OWNER: In the execution of the work provided for herein Contractor shall operate as an independent Contractor and not as the agent for Owner.

Article 11. SUPERINTENDENCE: Contractor agrees to designate, appoint and maintain a competent Superintendent who, on behalf of Contractor, shall have complete charge of all work under this Contract. Contractor shall promptly advise Owner in writing, giving the name, address and telephone number (day and night) of such designated Superintendent and of any changes from time to time in such superintendence.

Article 12. PERFORMANCE OF WORK: Contractor agrees to proceed with the work to be performed under this Contract and each and every part and detail thereof, in the best and most workmanlike manner by qualified, careful and efficient workers, and agrees to do the several parts thereof at such time and in such order as Owner may direct and agrees to finish such work in strict conformance with said plans, drawings and/or specifications, or any changes, modifications or amplifications thereof made by Owner.

In the event of failure of the Contractor at any time to perform the work either in whole or in part according to the terms hereof, and/or in the event of defective workmanship, and/or materials furnished by Contractor as may be determined by the Inspection of Owner then Owner at any time may, at its discretion, require Contractor to remedy such failure or defect at such time as may be specified by Owner at no expense to the latter, or may undertake to remedy such failure or defect and deduct from any payments due, or to become due to Contractor, the cost thereof, or may terminate this Contract and/or complete the same and deduct from sums due or to become due to Contractor, or recover from Contractor costs of completion or correction plus damages due to Contractor's failure to perform.

Article 13. INSPECTION: Contractor agrees that representatives of the Owner, or any person appointed by Owner, will be permitted to visit and inspect said work, or any part thereof, at all times and places during the progress of the work, and Contractor agrees to provide sufficient, safe and proper facilities for such inspection. All materials and workmanship supplied in the performance of this Contract shall be subject to inspection and tests and approval by the Owner, at any and all times during the manufacture or construction and at any and all places where such manufacture or construction is carried on.

Article 14. DELAYS AND EXTENSIONS: The time during which Contractor is actually delayed in the performance of work hereunder by the acts of omission or commission of Owner or of the employees or agents of Owner, or by the acts of God, or by the elements which Contractor could not reasonably foresee and provide against, or by other causes beyond Contractor's reasonable control, including without limitation shortage of materials or equipment, (provided that the Contractor has ordered all necessary materials and equipment at the proper times and used reasonable effort to obtain delivery of such materials and equipment at the time and in the order required to carry on the work properly) strikes, boycotts, or like obstructive action by employees or labor organizations, or lockouts, or other defensive action by other employers whether general or individual, or by organization of other employees, shall be added to the aforesaid time of completion of said work, provided Contractor gives prompt written notice to the Owner of the event causing such delay and the probable duration thereof.

Contractor shall not be entitled to, and does hereby waive any and all damages which it may suffer by reason of Owner hindering or delaying Contractor in the progress of said work, or any portion thereof.

Article 15. SUSPENSION FOR CONVENIENCE: The Owner for its convenience may suspend this Contract in whole or in part at any time by written or telegraphic notice to the Contractor. Such notice shall state the extent and the effective date of such suspension, and on the effective date thereof Contractor shall promptly suspend such work to the extent specified, and during the period of such suspension shall properly care for and protect all work and materials, housing and equipment on hand for construction under this Contract. Contractor also shall promptly supply the Owner copies of all outstanding orders for materials, equipment and services, and shall take such action relative to such orders as may be directed by the Owner. If the performance of the work is thus suspended, Contractor shall be entitled to be reimbursed for all additional expenses incurred by reason of such suspension as agreed upon by Contractor and Owner.

Article 16. TERMINATION FOR CONVENIENCE:

A. The Owner may, for its convenience terminate work under this contract in whole or in part at any time by written or telegraphic notice to the Contractor. Such notice shall state the extent and effective date of such termination and on the effective date thereof the Contractor will, as and to the extent directed, stop work under this Contract and the placement of further orders or Sub-Contracts hereunder, terminate work under orders and Sub-Contracts outstanding hereunder, and take any necessary action to protect property in the Contractor's possession in which the Owner has or may acquire an interest.

B. In the event of such termination, as hereinabove in paragraph A provided, Owner shall pay to Contractor, (1) its costs for all work done in conformity with this Contract, and (2) other costs pertaining to the work which Contractor may incur as a result of such termination, all as approved by Owner, plus 10% of such costs (excluding costs under (2) above), for overhead and profit. Total payments, if any, to be made under this Article 16 shall not exceed the total Contract price. Any payment under this Article 16B shall be made ninety-five (95) days after cessation of performance of labor or of the furnishing of materials hereunder subject, however, to withholding by Owner for the reasons and in the manner provided in Article 22 hereof pertaining to withholding of payments for liens and stop notices.

C. The provisions of this Article 16 shall not apply in the event of default of Contractor, and Owner reserves the right to terminate this Contract or exercise any other remedies for default of Contractor.

Article 17. **TERMS OF PAYMENT:** Owner, within ten (10) days after the end of each month, shall estimate the value of work done and materials furnished by Contractor during such month and Owner shall pay to Contractor, within twenty (20) days after the end of each such month, in accordance with Owner's usual practice of vouchering accounts, ninety percent (90%) of the amount so estimated by Owner to be due Contractor for that month; the remaining ten percent (10%) of such amount shall be paid Contractor by Owner ninety-five (95) days after completion and acceptance by Owner of the work provided for herein.

Anything herein to the contrary notwithstanding, Owner shall have the right to withhold final payment to the Contractor until Contractor shall furnish the Owner written releases and waivers of all rights to claim or file liens properly executed by any and all subcontractors, vendors or others furnishing work, labor or materials in the performance of this Contract and a satisfaction in full and release of all claims and demands of Contractor against Owner and Architect-Engineer or Owner's property arising out of or incidental to this Contract or the performance thereof.

Article 18. **ACCEPTANCE OF WORK:** It is mutually agreed that no payment made under this Contract shall be evidence of the performance of this Contract, either wholly or in part, and that no payment shall be construed to be in acceptance of defective or improper materials.

Article 19. **PATENT RIGHTS:** Contractor shall at once discharge, indemnify and hold Owner harmless from and against any and all claims (including attorney's fees, and other expenses of suits) for infringement or use of patent rights in connection with the work to be performed hereunder and the use by the Owner of any materials, parts, tools, equipment, appliances or products of this Contract, fabricated or furnished by Contractor.

Article 20. INSURANCE AND BOND:

A. If required on Face Sheet "B" hereof Contractor agrees to furnish two bonds, issued by a Bonding Company satisfactory to Owner, one for "Performance" coverage in the amount of fifty percent (50%) of the Contract price, and the other for "Payment" coverage, in the amount of fifty percent (50%) of the contract price, the two together being equal to one hundred percent (100%) of the contract price. Forms for said bonds shall be furnished by Owner to Contractor. Said bonds shall be in such forms and at such premiums as shall be satisfactory to Owner and shall be procured through insurance brokers or agents designated by Owner, and with corporate sureties satisfactory to Owner; and Owner shall pay all premiums for such bonds direct to the Bonding Company upon submission of its invoice.

B. The Contractor shall procure, carry and maintain upon all of its operations hereunder the following policies of insurance:

An open account with the Workmen's Compensation Fund of the State of Washington; Comprehensive Public Liability Insurance, covering all operations of insured, including operations under subcontracts and covering all vehicles and equipment (whether owned, rented or borrowed), as well as any liability assumed under this contract or any other contract with limits of not less than \$50,000.00 for injuries to, or death of, any one person, and \$100,000.00 for injuries to, or death of, two or more persons in any one accident; \$10,000.00 for damage to property in any one accident; and \$5,000.00 for damage to property in any one accident caused by motor vehicles. Such policies shall be in such form and shall be issued by such insurance company or companies as may be satisfactory to Owner. Contractor shall pay all premiums on such insurance. Contractor shall provide Owner with insurance certificates in quadruplicate showing the above coverage and containing the following statement:

"Ten (10) days' notice of cancellation or change will be given to Kaiser Gypsum Company, Inc., and Kaiser Engineers Division of Henry J. Kaiser Company, Kaiser Building, Oakland 12, California, before any cancellation or change of policy will be effective."

Article 21. **LIABILITY - THIRD PARTY CLAIMS:** Contractor expressly agrees to indemnify and save harmless Owner from and against any loss, damage, injury or liability however same may be caused, arising directly or indirectly from the acts or omissions of Contractor, its agents or employees in the performance of the work under this Agreement.

Contractor shall be responsible for all damages to persons or property that occur as a result of the fault or negligence of Contractor and the agents and employees of Contractor. Contractor shall be responsible for all materials delivered and work performed until completion and final acceptance by Owner. Upon completion of the Contract the work shall be delivered to Owner complete and undamaged.

Article 22. **LIENS:** Contractor expressly agrees to discharge at once all liens, claims, stop notices or attachments which may be filed in connection with said work and hold Owner harmless therefrom. In the event that any sum is payable hereunder by Owner to Contractor, other than the final payment after the completion of the work, there may be withheld from any such sum an amount equal to 125% of the aggregate amount of all liens arising out of the work hereunder which may have been filed or levied against the Owner's property, and 125% of the amount of all stop notices which may have been served on Owner. Such amounts may be withheld until such liens are discharged and such stop notices released.

The final payment hereunder shall not be payable while any such liens remain undischarged or record or stop notices remain unsatisfied.

Article 23. **CONTRACTOR TO REMOVE DEBRIS AND WASTE MATERIALS:** Contractor shall at all times remove all debris and waste material and leave the premises in a neat and clean condition, all to the satisfaction of the Owner. Scrap and other materials of value furnished by Owner and not incorporated in the work shall be turned over to or left with Owner.

Article 24. **SIMULTANEOUS WORK BY OTHERS:** Owner reserves the right to perform, or have performed, in and about the work during the time when Contractor is performing its work hereunder such other work as Owner desires and Contractor shall make all reasonable effort to perform its work hereunder in such manner as will enable such other work to be performed without hindrance from Contractor and will make no claim for damage against Owner arising out of such other work or interference therefrom.

Article 25. **ASSIGNMENT:** This Contract shall not be assigned, sublet or transferred in whole or in part by Contractor, nor shall Contractor assign any moneys due or to become due without prior written consent of Owner, and any attempted assignment hereunder without the previous written consent of Owner shall be void. No drafts for Sub-contracted work will be allowed.

Article 26. **ATTORNEYS FEES:** Contractor hereby agrees to pay to Owner a reasonable sum as attorney's fees in all court actions brought by either of them against the other or in which they are both plaintiffs or defendants, and also in court actions involving offsetting claims between Contractor and Owner, because of any doubts, disputes or actions arising out of this Contract, except in the following cases:

(a) When Contractor obtains a favorable net judgement against Owner, after consideration of claims and offsets of Owner which are allowed by the court against Contractor, for breach of this Contract.

(b) When the Owner is denied a favorable judgement by a court in any suit against Contractor which may be brought by Owner.

Article 27. **LABOR RATES:** Contractor shall comply strictly with wages and working conditions required by the Unions affiliated with the Building Trades Department of the American Federation of Labor having jurisdiction of the work during the entire course thereof and Contractor shall pay no more or less than the amount required to be paid for various classifications of labor by said Unions. No adjustment in the compensation payable to Contractor will be allowed to Contractor for any increase in labor costs.

Article 28. REMOVAL OF EMPLOYEES: The Owner may require the removal or discharge of any person employed in or about the Owner's facilities if it determines that the employment of such person is detrimental to the performance of work in connection with Owner's facilities, or if, in the Owner's opinion, the employee is not qualified to perform the work assigned to him or is guilty of improper conduct.

Article 29. INFORMATION CONFIDENTIAL: All plans, drawings, specifications and/or information given Contractor in connection with performance of this Contract shall be held confidential by the Contractor and shall not be used for any purposes other than those for which they have been supplied or prepared. The Contractor agrees that, as far as possible, it will keep confidential the making of this Contract and the terms hereof.

Article 30. LIQUIDATED DAMAGES: The damages that may result from any delay in completion of the work by the time agreed upon, will be difficult, if not impossible, of ascertainment. If the work is not completed on or before the date fixed for its completion by the terms of this Contract, the Contractor shall pay to owner as fixed, agreed, and liquidated damages, the sum shown on Face Sheet "B" for each calendar day's delay elapsing after said date until the work is satisfactorily completed.

Article 31. NOTICES: All notices required or permitted to be given under this Contract may be given by either party to the other by depositing same in the United States Mail enclosed in a sealed envelope with first class postage thereon fully prepaid, or by telegram, either of which shall be addressed to the respective parties at the address shown on Face Sheet "B" hereof. The address of either party may be changed at any time by written notice to the other of such change. Any notice in the form of a letter deposited by either party shall be deemed to have been given and received by the other party within ninety-six (96) hours after mailing as aforesaid. Any notice given by telegraph addressed as above provided, shall be deemed to have been given and delivered within twelve (12) hours after the message is submitted to the telegraph company.

Article 32. FAIR LABOR STANDARD CERTIFICATION: Contractor promises to give a certification in the following words or words substantially equivalent thereto, which will appear on the invoices or some other documents: "We hereby certify that the goods covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act as amended including Sections 6, 7 and 12 thereof and of the regulations and orders of the U. S. Department of Labor, issued under Section 14 thereof."

Article 33. CONTRACT ENTIRE AGREEMENT: This Contract, together with the exhibits, plans and specifications referred to herein, shall constitute the entire agreement between the parties and shall supersede all prior negotiations, proposals and purchase orders, whether written or oral.